

REMARKS

The issues outstanding in the office action mailed November 30, 2001, are the rejections under 35 U.S.C. §112 and § 103. Reconsideration of these issues in view of the following discussion, is respectfully requested.

Rejection under 35 U.S.C. §112

Claims 4-14 have been rejected under 35 U.S.C. §112, second paragraph. Reconsideration of this rejection is respectfully requested. A minor typographical error has been corrected in the claims. Moreover, with respect to the examiner's question whether "polyoxyethylene" is intended instead of "polyoxyalkylene", it is submitted that polyoxyalkylene moieties other than polyoxyethylene are clearly supported in the specification. For example at page 2, the last paragraph, polyoxypropylene polyoxytetramethylene, polyoxyhexamethylene block copolymers etc are listed. Thus, it is submitted that the claim language as it exists is clearly intended and supported. Withdrawal of the rejection is therefore respectfully requested.

Claims 4-9 have been rejected under 35 U.S.C. §112, first paragraph. Reconsideration of the rejection is respectfully requested.

At the outset, it is noted that this rejection is moot for all claims other than claim 15, which contains the objected to language. The remaining claims have been amended in order to recite that the polymer is a polyether polyamide block copolymer to overcome this rejection. It is noted that this amendment modifies only the copolymer element, and not the remainder of the claim.

In connection with this rejection, the examiner suggests that it is "notorious" that the polymers claimed have poor physical properties and "unlikely" that such polymers would perform adequately in a given application.

Again, it is not seen why the office action questions the claims. First, it is submitted that objective enablement, all that is required by statute, is present in the specification. It is well established that objective enablement, in the absence of reasons or evidence to the contrary, are sufficient to satisfy §112 of the statute, see *In re Marzocchi*, 169 USPQ 367 (CCPA 1971). The only reason or evidence put forth in the office action is the unsupported allegation that the polymers are "notorious" for poor physical properties and would be "usually" liquid. It is submitted that this does not rise to the level necessary to rebut the objective enablement set forth in the specification, for example, at page 2, the last paragraph and in the examples, which show that the films work as discussed in the specification. Withdrawal of this rejection is therefore respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 4-14 remain rejected under 35 U.S.C. § 103 over Flesher or Werenicz or WO '96/15174, each taken with Pia.

It is respectfully submitted that the references, either singularly or in combination, fail to suggest presently claimed method of composting, using a particularly defined film, which meets the characteristics set forth in independent claims 4 and 15 (claim 4 parallels claim 15, but recites that the polymer containing polyether chains is a polyether polyamide block copolymer).

Flesher discloses a polyetheresteramide, and water vapor permeable films thereof. Patentees teach that these films are used in "many application[sic] and especially for composite articles and objects provided with such film(s) and intended for contact with the human or animal body." Patentees list, in particular, manufacture of clothing, footwear, adhesive or non-adhesive dressings, or compresses and linen employed in operating units, as well as hardware supports for curative or preventative medications administered subcutaneously. Patentees further indicate that the films may be used in the manufacturing of seats such as motor vehicle seats or under roofing materials in order to increase leak proofing of the roof without retaining moisture. See column 3, lines 20-60.

Werenicz discloses a polyurethane- based film, which is water permeable, and teaches that the film may be used in "applications in which water-vapor permeability is desirable." See column 1, lines 23-26. Patentees teach that these applications include weatherproof clothing and tarpaulins, and "in the construction industry." See column 1, lines 21-24.

WO 96/15174 discloses polyethers used in biodegradable moldings, adhesives, foams and blends with starch. See the abstract.

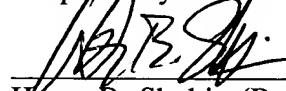
Thus, as admitted in the office action, these references fail to suggest the use of their films in the production of covers for composting. In order to remedy this deficiency, the office cites Pia '951. However, the films disclosed in therein have significant differences from those of the primary references. As noted previously, the film disclosed in Pia possesses holes (see, for example, the abstract and figures) and thus also clearly does not possess the characteristics of the materials of the primary references, or the present claims. However, it is argued in the office action that it would be obvious to employ the films of the primary references, which are gas permeable, in order to replace the non-gas permeable hole-containing film of Pia. Applicants respectfully disagree with this analysis. Even though Pia arguably teaches that the carbon dioxide in oxygen rates can be controlled through use of their film, what Pia actually teaches is that such control can be performed by the selection of size and location of the holes or vents in the film. See column 2, lines 21-34.

Thus, there is absolutely no suggestion in the references, whether singly or in combination, to transfer the permeable films of the primary references to the quite different use of the secondary references, in the absence of impermissible hindsight. This is even more so the case for the polyether block polyamide of claims 4-14.

Accordingly, it is maintained that the claims of the application are not suggested by the references, and it is submitted that the claims of the application are all in condition for allowance. Passage to issue is thus respectfully requested.

Should the examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

4. (Twice Amended) A method of composting comprising providing a heap of compostable matter and covering the heap with a film comprising a polyether polyamide block copolymer, said film having a water vapor permeability thereof at least $300 \text{ g/m}^2 \cdot 24\text{h}$, an oxygen permeability at least $1,000 \text{ cm}^3/\text{m}^2 \cdot 24\text{h} \cdot \text{atm}$ and a carbon dioxide permeability at least $10,000 \text{ cm}^3/\text{m}^2 \cdot 24\text{h} \cdot \text{atm}$.